

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation against:

JOHN EDWARD COMBS

6013 Oliva Avenue

Lakewood, CA 90712

Land Surveyor License No. L 4861,

Respondent.

Case No. 833-A

OAH No. 2010050570

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board for Professional Engineers, Land Surveyors, and Geologists as its Decision in the above-entitled matter.

This Decision shall become effective on April 29, 2011.

IT IS SO ORDERED March 24, 2011.

Original Signed

BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS
Department of Consumer Affairs
State of California

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PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings on December 8 and 9, 2010, in Los Angeles, California. Complainant was represented by Shawn P. Cook, Deputy Attorney General. John Edward Combs (Respondent) appeared with his attorney, Michael R. Harlin.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on December 9, 2010.

FACTUAL FINDINGS

1. On November 25, 2009, Complainant David E. Brown filed the Accusation while acting in his official capacity as the Executive Officer of the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs, State of California. On August 19, 2010, Complainant filed a Supplemental Accusation. On December 8, 2010, Complainant filed an Amendment to Supplemental Accusation.

2. On March 19, 1980, the Board issued Land Surveyor License No. L 4861 to Respondent. The license is in full force and effect and will expire on September 30, 2012, unless renewed.

Experts

3. David Lindell testified as Complainant's expert to establish the standard of practice in this case. Mr. Lindell has been licensed as a land surveyor in California since 1972. He is currently a self-employed land surveyor and has acted as a Board expert in approximately 12 investigations over the past 20 years. He testified in a forthright, calm and reasonable manner and is deemed to be a very credible witness.

4. Respondent offered his own testimony to establish the standard of practice in this case. His opinions demonstrated his unwavering belief in the propriety of his own practices. However, Respondent's opinions are potentially, if not actually, influenced by an incentive to frame his actions in a favorable light, given the prospect of discipline looming before him. Additionally, Respondent's testimony was combative (for example, he indicated that he was "at war" with Orange County and with the Board), was contrary to the testimony of several unbiased witnesses, and was fraught with his shifting blame to others (for example: (1) in explaining his inability to close a block in a San Bernardino County survey, he noted that "their map is screwed up and they wanted me to fix it"; and (2) when he denied conducting a Newport Beach survey at which his survey tags were found, he conjectured about the theft of his tags and their fraudulent use by a former business partner, who is now purportedly deceased). Given the foregoing, Respondent's testimony was not credible, and his opinions were not given any weight in determining the standard of practice.

Tract No. 1868 Sleepy Hollow Number Two

5. In 1997, Respondent performed a survey of lots in a recorded property subdivision located in San Bernardino County, California, described as Tract No. 1868 Sleepy Hollow Number Two. On January 16, 2001, Respondent filed Record of Survey (ROS) 00-36 with the San Bernardino County Surveyor's Office (SB County Surveyor).¹

6(a). Respondent's ROS 00-36 was slightly smaller than required and contained some technical errors, including numerical transpositions. Consequently, on January 30, 2001, it was returned by the SB County Surveyor to Respondent for corrections.

6(b). The January 30, 2001 cover letter from the SB County Surveyor, sent with the returned ROS, stated in pertinent part:

Upon submittal of the corrected size and pursuant to [Business and Professions Code] section 8768.5, please be advised that this office shall exercise our right to express an opinion regarding the record of survey and the methods and procedures used pursuant to sections 8766 and 8768. . . . [A]ny corrections that are technical in nature are for compliance with sections required of this office to review under [Business and Professions Code] section 8776 and shall be corrected and/or addressed in the County Surveyor's Note. Differences in

¹ At the time Respondent filed ROS 00-36, it was already the subject of the Board's investigation which led to the issuance of Citation 5064-L (see Factual Finding 22). However, the only issues investigated and addressed in that Citation were Respondent's failure to timely file the record of survey. Upon receipt of further information from the SB County Surveyor regarding the contents of ROS 00-36, the Board opened another investigation pertaining to whether Respondent's work on ROS 00-36 was below the standard of practice.

methods and procedures employed shall be addressed only in the County Surveyor's Note.

6(c). The letter noted the following under the heading "Differences in Methods or Procedures":

1) The map does not show or find sufficient survey monumentation to control the location of the property being surveyed. The only found monumentation is along the west tract boundary. The record and measured courses shown are running in a general easterly direction to the property. Block 9 error of closure is approximately S 32° E, 9.5 feet per our calculations. No analysis is shown to locate, isolate, or apportion said error.

2) After running the record courses, which establishes the north line of the property being surveyed, record and measure bearings are run along the sidelines to establish the southerly boundary line. Any discrepancy from record is then projected by this method unto [*sic*] the south line. As this property is comprised of street-to-street lots, it is our opinion that additional survey control or an alternative method to establish the south line be utilized. Block 10, which establishes the southerly right-of-way line of said street, has a minimal closure error using record data. In lieu of any other evidence presented, it would be our recommendation that Block 10 be incorporated into the survey to establish the road right-of-way. As the tract boundary was resurveyed and monuments set per RS 68/63-65, a tie to the south boundary of the tract, also being the south boundary of Blocks 9 and 10, should be beneficial to this survey.

3) The first checkpoint submitted for review shows a tie to a monument on the east tract boundary that was set by RS 68/63-65. A comparison of positions, per our calculations, to the record position of Tract No. 1868 is as follows:

R.S. 68/63-65 to Tract No. 1868: N 16° 34' 07" W, 1.56'.

R.S. 00-36 to Tract No. 1868: S 45° 25' 21" E, 9.09"

This tie has been removed from the mylar submitted for filing. As the property surveyed is essentially in the same position, our concern is: where did this error come from; why wasn't it accounted for in the survey; or was the error in the position a blunder? Given the errors of said Tract, a tie to the east boundary should be beneficial to this survey.

4) A review of record data per Tract No. 1868 indicates numerous errors exist. An analysis of one section incorporated into your survey

indicates an error with record bearing. The street area on the original map that is 80 by 80 foot square with the word "road" written in the center shows the bearing of the southeasterly line is not parallel to the northwesterly line. The bearing on the northwesterly line is N 41° 53' E while the southeasterly line is N 41° 05' E. This bearing of N 41° 05' E appears to be in error as a difference of 48 minutes would introduce a distance error of approximately 1.1 feet. This record bearing would introduce an error to adjacent lots 16 and 17. The southeasterly line of said lots has a bearing of N 41° 53' E which is parallel to the northwesterly line of said "road." Lot 16 is a 40 by 90-foot rectangular lot in which the northeasterly and southeasterly are parallel. To maintain the geometry of the 80 by 80 foot "road" area and the adjacent lots, said record bearing appears to be in error. This survey does not address this discrepancy.

7. On February 13, 2001, Respondent re-filed ROS 00-36. The SB County Surveyor added the following County Surveyor's Note to ROS 00-36:

Pursuant to sections 8766 and 8786 of the Business and Professions Code, the County Surveyor notes the following objections with this survey:

This map does not recognize or show, either graphically or by note, the discrepancy with record data, nor does it attempt to locate, isolate or apportion any error in record data. The map does not indicate either graphically or by note, that a diligent search was performed for original monumentation or perpetuation thereof, nor does it account for the physical location of improvements or occupation such as streets or fences. The map bases the position of the property being surveyed from found monumentation along the west boundary per R.S. 68/63-65 and by holding record courses, run in a [sic] easterly direction without substantiating this position by incorporating monuments set to control the south and east tract boundary per R.S. 68/63-65. As the record data for Block 9 indicates a closure error of approximately 9 feet and numerous additional errors can be ascertained by inspection of the map it is the opinion of the County Surveyor that this map is not in accordance with acceptable survey procedures.

8. Michael W. Raihle, County Surveyor with the SB County Surveyor's Office testified credibly at the administrative hearing, confirming the assertions of the SB County Surveyor's Office as stated in the January 30, 2001 letter and in the Note on ROS 00-36, filed on February 13, 2001.

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9. The credible testimony of Complainant's expert, Mr. Lindell, established the following:

(a) Respondent based his survey on record bearings and distances from an old map that does not close mathematically by gross amounts. Respondent started his survey at points set by the SB County Surveyor that were shown on a recent ROS but did not extend beyond his client's property to check into other points. Respondent claims that he isolated the errors in the block containing the lots he surveyed and that the errors were in the curves which did not pertain to his client's three lots.

(b) The standard of practice is to work between accepted found points in simultaneous conveyances like recorded subdivisions in order to apportion shortages and overages with respect to record data. If only record data is used, typically, only a Corner Record form is required.² However, if a ROS is filed, it should include an explanation for using only record data.

(c) Respondent's failure to tie into any other points along the easterly or southerly boundary of the tract that he surveyed constitutes negligence.

(d) Respondent was negligent in that he should have located evidence of original corners. Although they were noted on the original tract map as being marked with redwood 2"x2" stakes, Respondent claims that the stakes were gone. He also claims to have searched for pipes and found none. Lack of original evidence should have led to a search for nearby corners or perpetuations thereof. Lack of nearby corners should have led to the corners at the extremities of the tract. These were clearly shown on the recent SB County Surveyor ROS. In the alternative, Respondent's failure to note why he used only record data in his ROS constitutes negligence. Evidence such as occupation or improvements could have justified his use of record data only, but he never stated on his ROS why he used only record data.

270 Prospect Ave., Long Beach, CA

10. On December 13, 2007, Respondent was contacted by a general contractor, Jeff Calderwood, on behalf of property owners, Mr. and Mrs. William Reseigh, requesting him to survey and map the property identified as 270 Prospect Ave., Long Beach, California (Prospect property).

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² Respondent testified that, when there is a deed to the property surveyed, a surveyor is required to file a ROS only if the deed to the property contains exceptions to the lot and tract. He further testified that he had "no idea" why a surveyor would file a corner record since it does not affect land. He further opined that "a corner record is a ridiculous piece of paper," which is not required to be filed. As indicated in Factual Finding 4, this testimony was given no weight to establish the standard of practice.

11(a). On December 14, 2007, Respondent performed a survey of the Prospect property, a lot within a recorded subdivision. On the same day, he collected \$850 from his client, Mrs. Reseigh. Respondent did not execute a written contract between himself and his clients prior to performing any work.

11(b). Respondent claimed that he did not need to execute a written contract with the Reseighs because he had an established contract with the contractor, Mr. Calderwood. This assertion was not persuasive, since: (1) Mrs. Reseigh, not Mr. Calderwood, paid Respondent for the work; (2) Respondent could not produce the purported written contract with Mr. Calderwood; and (3) Respondent admitted in a June 2, 2008 letter to the Board that he had performed the work without a contract.

12. Respondent did not file a corner record or ROS.

13. The credible testimony of Complainant's expert, Mr. Lindell, established the following:

(a) The standard of practice is to execute a written contract with the client before proceeding with a survey. Respondent's failure to execute a written contract with his client that would have memorialized a description of his services and compensation constitutes negligence.

(b) Respondent's survey used points at street intersections that have no apparent pedigree according to their lack of reference. Respondent established lot lines by proration and set points on the east and west prolongations of lot lines. Respondent was required to file a Corner Record and to show the relation of the points established to the points of record, where there is no material discrepancy. In the alternative, if the street centerline points had no pedigree, thus disclosing a material discrepancy, Respondent was required to file a ROS. Respondent did not file a Corner Record or ROS. Respondent was negligent in that he failed to file a Corner Record with references to the centerline intersection points or to file a ROS explaining their use.

3572 Delta Avenue, Long Beach, CA

14. In 2005, Respondent performed a survey of a lot in a recorded subdivision for the property identified as 3572 Delta Avenue, Long Beach, California. The map was signed, sealed and dated by Respondent. Respondent did not file a corner record or ROS.

15. The credible testimony of Complainant's expert, Mr. Lindell, established the following: The map prepared by Respondent shows points set, but no method of establishment. There is no block closure to verify any of the numbers on the map. Depending on if there was a material discrepancy, Respondent was required to file either a ROS or a corner record. Respondent's failure to file either a ROS or a corner record constitutes negligence.

Lot 283, Tract 907 MM 28/25-33, Newport Beach, CA

16. Some time prior to 2009, Respondent set monuments (referenced by his tag number, LS 4861) as found to exist on submitted ROS 2008-1040, described as All Corner of Lot 283, Tract 907 MM 28/25-33, Newport Beach, California. However, Respondent failed to file either a corner record or a ROS within 90 days after setting his monuments.³ He also ignored inquiries by letters dated January 2, 2009, and May 15, 2009, from the Joint Professional Practices Committee of the California Land Surveyor's Association and the American Council of Engineering Companies of California, Orange County Chapter (JPPC-OC), concerning the fact that Respondent had not filed a ROS or corner record for the monuments he set.

17. The credible testimonies of Complainant's expert, Mr. Lindell, and JPPC-OC Chairman, Roger A. Frank, P.L.S., established that Respondent was required to file either a ROS or a corner record.

Centerline of Kings Road, 810' Easterly of Signal Road, Referenced on Corner Record 2009-2811A, Newport Beach, CA

18. Sometime prior to 2010, Respondent set monuments (referenced by his tag number, LS 4861) as found to exist on submitted Corner Record 2009-2811A, described as Centerline of Kings Road, 810' Easterly of Signal Road, Newport Beach, California. However, Respondent failed to file either a corner record or a ROS within 90 days after setting his monuments. He also ignored inquiries by letters dated December 6, 2009, and March 8, 2010, from the JPPC-OC concerning the facts of Respondent not filing a Record of Survey for the monuments set.

19. The credible testimonies of Complainant's expert, Mr. Lindell, and JPPC-OC Chairman, Roger A. Frank, P.L.S., established that Respondent was required to file either a ROS or a corner record.

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³ Despite his survey tags being found and referenced, Respondent denied setting the monuments in Newport Beach, as set forth in Factual Findings 16, 18 and 20. He conjectured that a former business partner had stolen several of his tags, many years prior, and had fraudulently used them. According to Respondent, the alleged culprit is now deceased. Given Respondent's lack of credibility (see Factual Finding 4), and the implausibility of the purported decedent's alleged criminal scheme, Respondent's denial of responsibility is not believable, particularly since the failures to file either a ROS or corner record fit Respondent's modus operandi.

Centerline of Kings Road, 670' Easterly of Signal Road, Referenced on Corner Record 2009-2803A, Newport Beach, CA

20. Sometime prior to 2010, Respondent set monuments (referenced by his tag number, LS 4861) as found to exist on submitted Corner Record 2009-2803A, description being Centerline of Kings Road, 670' Easterly of Signal Road, Newport Beach, California. However, Respondent failed to file either a corner record or a ROS within 90 days after setting his monuments. He also ignored inquiries by letters dated December 6, 2009, and March 8, 2010, from the JPPC-OC concerning the facts of Respondent not filing a Record of Survey for the monuments set.

21. The credible testimonies of Complainant's expert, Mr. Lindell, and JPPC-OC Chairman, Roger A. Frank, P.L.S., established that Respondent was required to file either a ROS or a corner record.

Discipline Considerations

22. To determine the degree of discipline, if any is imposed, the following was established: On February 29, 2001, in Case Number 5064-L, the Board issued a Citation to Respondent for violating Business and Professions Code section 8762 after he failed to record a ROS within 90 days after performing a field survey in September 1997 during which he set monuments and established boundary lines on property located in San Bernardino County.

Costs

23. Complainant submitted as evidence of the costs of investigation and prosecution of this matter a Certification of Costs of Investigation and Prosecution (Costs Certification), signed by Nancy A. Eissler, Enforcement Program Manager for the Board, certifying that the Board had incurred \$8,111.25 in costs for expert services and the Attorney General's legal services through December 3, 2010. The Costs Certification specified that \$600 in costs had been incurred for expert services, and that \$7,511.25 had been incurred for Attorney General costs.⁴

24. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Board must exercise its discretion to reduce or eliminate cost awards in a manner which will ensure that the cost award statutes do not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. In exercising its discretion to order payment of costs, the Board must also consider the licensee's ability to make payment. Considering the *Zuckerman* factors, Respondent's economic circumstances

⁴ This Costs Certification was admitted as a certified copy of the actual costs incurred by the Board, signed by a designated representative of the Board. Pursuant to Business and Professions Code section 125.3, the Costs Certification was considered prima facie evidence of the reasonable costs of investigation and prosecution in this matter.

warrant reduction of the award of Complainant's reasonable costs. Respondent's financial status reflects that it would be unduly punitive to require him to pay all of the costs. Accordingly, a 75 percent reduction is appropriate in these circumstances. The reasonable costs of investigation and prosecution are therefore deemed to be \$2,027.81.

LEGAL CONCLUSIONS

Tract No. 1868 Sleepy Hollow Number Two - First Cause for Discipline

1. Cause exists to discipline Respondent's land surveyor license, pursuant to Business and Professions Code section 8780, subdivision (b), on the grounds that Respondent committed negligence in the practice of land surveying, as set forth in Factual Findings 5 through 9.

270 Prospect Ave., Long Beach, CA – Second, Third, Fourth & Fifth Causes for Discipline

2. Cause exists to discipline Respondent's land surveyor license, pursuant to Business and Professions Code section 8780, subdivision (b), on the grounds that Respondent committed negligence in the practice of land surveying, as set forth in Factual Findings 10 through 13.

3. Cause exists to discipline Respondent's land surveyor license, pursuant to Business and Professions Code section 8759, subdivision (a), in that he failed to execute a written contract with his client before commencing work, as set forth in Factual Findings 10 through 13.

4. Cause exists to discipline Respondent's land surveyor license, pursuant to Business and Professions Code section 8780, subdivision (d), for violation of Business and Professions Code section 8762, subdivisions (b) and (c) (failure to file a record of survey), or in the alternative, for violation of Business and Professions Code section 8765, subdivision (d), and California Code of Regulations, title 16, section 464, subdivision (c) (failure to file a corner record), as set forth in Factual Findings 10 through 13, and Legal Conclusion 5.

5(a). Respondent argued that he was never required to file a corner record, maintaining that such filing is not mandatory under Business and Professions Code section 8773. This argument was not persuasive, since section 8773 does not make filing of a corner record discretionary. Instead, section 8773, subdivision (a), mandates the filing of a corner record for every corner and every accessory to such corner which is "found, set, reset or used as control." While section 8773, subdivision (c), does contain the word "may," that language pertains to a list of things for which such a corner record "may" be filed (which includes property corners, property controlling corners, reference monuments, or accessories to a property corner). Moreover, Respondent did not take into consideration the provisions of Business and Professions Code sections 8773.4, 8762 and 8765, subdivision (d), and California Code of Regulations, title 16, section 464, all of which point to requirements which differ from his assertion.

5(b). Business and Professions Code section 8773 provides:

(a) Except as provided in subdivision (b) of Section 8773.4, a person authorized to practice land surveying in this state shall complete, sign, stamp with his or her seal, and file with the county surveyor or engineer of the county where the corners are situated, a written record of corner establishment or restoration to be known as a "corner record" for every corner established by the Survey of the Public Lands of the United States, except "lost corners," as defined by the Manual of Instructions for the Survey of the Public Lands of the United States, and every accessory to such corner which is found, set, reset, or used as control in any survey by such authorized person.

(b) After the establishment of a lost corner, as defined by the Manual of Instructions for the Survey of the Public Lands of the United States, a record of survey shall be filed as set forth in Section 8764.

(c) Any person authorized to practice land surveying in this state may file such corner record for any property corners, property controlling corners, reference monuments, or accessories to a property corner.

5(c). Business and Professions Code section 8773.4 provides:

(a) A corner record shall be signed by a licensed land surveyor or licensed civil engineer and stamped with his or her seal, or in the case of an agency of the United States government or the State of California, the certificate may be signed by the chief of the survey party making the survey, setting forth his or her official title, prior to filing.

(b) A corner record need not be filed when:

(1) A corner record is on file and the corner is found as described in the existing corner record.

(2) All conditions of Section 8773 are complied with by proper notations on a record of survey map filed in compliance with the Professional Land Surveyors' Act or a parcel or subdivision map, in compliance with the Subdivision Map Act.

(3) When the survey is a survey of a mobilehome park interior lot as defined in Section 18210 of the Health and Safety Code, provided that no subdivision map, official map, or record of survey has been previously filed for the interior lot or no conversion to residential

ownership has occurred pursuant to Section 66428.1 of the Government Code.

(c) This section shall not apply to maps filed prior to January 1, 1974.

5(d) Business and Professions Code section 8762 provides:

(a) Except as provided in subdivision (b), after making a field survey in conformity with the practice of land surveying, the licensed surveyor or licensed civil engineer may file with the county surveyor in the county in which the field survey was made, a record of the survey.

(b) Notwithstanding subdivision (a), after making a field survey in conformity with the practice of land surveying, the licensed land surveyor or licensed civil engineer shall file with the county surveyor in the county in which the field survey was made a record of the survey relating to land boundaries or property lines, if the field survey discloses any of the following:

(1) Material evidence [of] physical change, which in whole or in part does not appear on any subdivision map, official map, or record of survey previously recorded or properly filed in the office of the county recorder or county surveying department, or map or survey record maintained by the Bureau of Land Management of the United States.

(2) A material discrepancy with the information contained in any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States. For purposes of this subdivision, a "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions.

(3) Evidence that, by reasonable analysis, might result in materially alternate positions of lines or points, shown on any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States.

(4) The establishment of one or more points or lines not shown on any subdivision map, official map, or record of survey, the positions of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey.

(5) The points or lines set during the performance of a field survey of any parcel described in any deed or other instrument of title recorded in the county recorder's office are not shown on any subdivision map, official map, or record of survey.

(c) The record of survey required to be filed pursuant to this section shall be filed within 90 days after the setting of boundary monuments during the performance of a field survey or within 90 days after completion of a field survey, whichever occurs first.

(d)(1) If the 90-day time limit contained in subdivision (c) cannot be complied with for reasons beyond the control of the licensed land surveyor or licensed civil engineer, the 90-day time period shall be extended until the time at which the reasons for delay are eliminated. If the licensed land surveyor or licensed civil engineer cannot comply with the 90-day time limit, he or she shall, prior to the expiration of the 90-day time limit, provide the county surveyor with a letter stating that he or she is unable to comply. The letter shall provide an estimate of the date for completion of the record of survey, the reasons for the delay, and a general statement as to the location of the survey, including the assessor's parcel number or numbers.

(2) The licensed land surveyor or licensed civil engineer shall not initially be required to provide specific details of the survey. However, if other surveys at the same location are performed by others which may affect or be affected by the survey, the licensed land surveyor or licensed civil engineer shall then provide information requested by the county surveyor without unreasonable delay.

(e) Any record of survey filed with the county surveyor shall, after being examined by him or her, be filed with the county recorder.

(f) If the preparer of the record of survey provides a postage-paid, self-addressed envelope or postcard with the filing of the record of survey, the county recorder shall return the postage-paid, self-addressed envelope or postcard to the preparer of the record of survey with the filing data within 10 days of final filing. For the purposes of this subdivision, "filing data" includes the date, the book or volume, and the page at which the record of survey is filed with the county recorder.

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5(e). Business and Professions Code section 8765 provides:

A record of survey is not required of any survey:

(a) When it has been made by a public officer in his or her official capacity and a reproducible copy thereof, showing all data required by Section 8764, except the recorder's statement, has been filed with the county surveyor of the county in which the land is located. Any map so filed shall be indexed and kept available for public inspection.

(b) Made by the United States Bureau of Land Management.

(c) When a map is in preparation for recording or shall have been recorded under the provisions of the Subdivision Map Act.

(d) When the survey is a retracement of lines shown on a subdivision map, official map, or a record of survey, where no material discrepancies with those records are found and sufficient monumentation is found to establish the precise location of property corners thereon, provided that a corner record is filed for any property corners which are set or reset or found to be of a different character than indicated by prior records. For purposes of this subdivision, a "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions.

(e) When the survey is a survey of a mobilehome park interior lot as defined in Section 18210 of the Health and Safety Code, provided that no subdivision map, official map, or record of survey has been previously filed for the interior lot or no conversion to residential ownership has occurred pursuant to Section 66428.1 of the Government Code.

5(f). California Code of Regulations, title 16, section 464 provides:

(a) The corner record required by Section 8773 of the Code for the perpetuation of monuments shall contain the following information for each corner identified therein:

(1) The county and, if applicable, city in which the corner is located.

(2) An identification of the township, range, base, and meridian in which the corner is located, if applicable.

(3) Identification of the corner type (example: government corner, control corner, property corner, etc.).

(4) Description of the physical condition of

(A) the monument as found and

(B) any monuments set or reset.

(5) The date of the visit to the monument when the information for the corner record was obtained.

(6) For Public Land Corners for which a corner record is required by Section 8773(a) of the Code, a sketch shall be made showing site recovery information that was used for the corner. For other kinds of corners, a drawing shall be made which shows measurements that relate the corner to other identifiable monuments.

(7) A reference to the California Coordinate System, is optional at the discretion of the preparer of the record.

(8) The date of preparation of the corner record and, as prescribed by Section 8773.4 of the Code, the signature and title of the chief of the survey party if the corner record is prepared by a United States Government or California State agency or the signature and seal of the land surveyor or civil engineer, as defined in Section 8731 of the Code, preparing the corner record.

(9) The date the corner record was filed and the signature of the county surveyor.

(10) A document or filing number.

(b) A corner record shall be filed for each public land survey corner which is found, reset, or used as control in any survey by a land surveyor or a civil engineer. Exceptions to this rule are identified in Section 8773.4 of the Code.

(c) The corner record shall be filed within 90 days from the date a corner was found, set, reset, or used as control in any survey. The provisions for extending the time limit shall be the same as provided for a record of survey in Section 8762 of the Code.

(d) A corner record may be filed for any property corner, property controlling corner, reference monument, or accessory to a property corner, together with reference to record information. Such corner record may show one or more property corners, property controlling

corners, reference monuments, or accessories to property corners on a single corner record document so long as it is legible, clear, and understandable.

(e) When conducting a survey which is a retracement of lines shown on a subdivision map, official map, or a record of survey, where no material discrepancies with these records are found and where sufficient monumentation is found to establish the precise location of property corners thereon, a corner record may be filed in lieu of a record of survey for any property corners which are set or reset or found to be of a different character than indicated by prior records. Such corner records may show one or more property corners, property controlling corners, reference monuments, or accessories to property corners on a single corner record document so long as it is legible, clear, and understandable. . . .

5(g). The provisions of Business and Professions Code sections 8773, 8773.4, 8762 and 8765, subdivision (d), and California Code of Regulations, title 16, section 464, construed as part of a statutory scheme, indicate that the filing of a ROS is mandatory upon discovery of specific circumstances, including: (1) material evidence [of] physical change; (2) a material discrepancy with the information contained in any previously-filed/recorded subdivision map, official map, or record of survey; (3) evidence that, by reasonable analysis, might result in materially alternate positions of lines or points, shown on any previously-filed subdivision map, official map, or record of survey; (4) the establishment of one or more points or lines not shown on any subdivision map, official map, or record of survey; or (5) the points or lines set during the performance of a field survey of any parcel described in any deed or other instrument of title recorded in the county recorder's office are not shown on any subdivision map, official map, or record of survey. A ROS is not required when the survey is a retracement of lines shown on a subdivision map, official map, or ROS, where no material discrepancies with those records are found and sufficient monumentation is found to establish the precise location of property corners thereon. Nevertheless, a corner record must be filed for any property corners which are set or reset or found to be of a different character than indicated by prior records. A corner record need not be filed when a corner record is already on file and the corner is found as described in the existing corner record.

3572 Delta Avenue, Long Beach, CA - Sixth, Seventh, Eighth & Ninth Causes for Discipline

6. Cause exists to discipline Respondent's land surveyor license, pursuant to Business and Professions Code section 8780, subdivision (b), on the grounds that Respondent committed negligence in the practice of land surveying, as set forth in Factual Findings 14 and 15.

7. Cause exists to discipline Respondent's land surveyor license, pursuant to Business and Professions Code section 8780, subdivision (d), for violation of Business and Professions Code section 8762, subdivisions (b) and (c) (failure to file a record of survey), or

in the alternative, for violation of Business and Professions Code section 8765, subdivision (d), and California Code of Regulations, title 16, section 464, subdivision (c) (failure to file a corner record), as set forth in Factual Findings 14 and 15, and Legal Conclusion 5.

8. Cause does not exist to discipline Respondent's land surveyor license, pursuant to Business and Professions Code section 8759, subdivision (a), in that Complainant did not establish that Respondent failed to execute a written contract with his client before commencing work at the Delta Avenue property, as set forth in Factual Findings 14 and 15.

Lot 283, Tract 907 MM 28/25-33, Newport Beach, CA
Tenth and Thirteenth Causes for Discipline

9. Cause exists to discipline Respondent's land surveyor license, pursuant to Business and Professions Code section 8780, subdivision (d), for violation of Business and Professions Code section 8762, subdivisions (b) and (c) (failure to file a record of survey), or in the alternative, for violation of Business and Professions Code section 8765, subdivision (d), and California Code of Regulations, title 16, section 464, subdivision (c) (failure to file a corner record), as set forth in Factual Findings 16 and 17, and Legal Conclusion 5.

Centerline of Kings Road, 810' Easterly of Signal Road, Referenced on Corner Record 2009-2811A, Newport Beach, CA – Eleventh and Fourteenth Causes for Discipline

10. Cause exists to discipline Respondent's land surveyor license, pursuant to Business and Professions Code section 8780, subdivision (d), for violation of Business and Professions Code section 8762, subdivisions (b) and (c) (failure to file a record of survey), or in the alternative, for violation of Business and Professions Code section 8765, subdivision (d), and California Code of Regulations, title 16, section 464, subdivision (c) (failure to file a corner record), as set forth in Factual Findings 18 and 19, and Legal Conclusion 5.

Centerline of Kings Road, 670' Easterly of Signal Road, Referenced on Corner Record 2009-2803A, Newport Beach, CA – Twelfth and Fifteenth Causes for Discipline

11. Cause exists to discipline Respondent's land surveyor license, pursuant to Business and Professions Code section 8780, subdivision (d), for violation of Business and Professions Code section 8762, subdivisions (b) and (c) (failure to file a record of survey), or in the alternative, for violation of Business and Professions Code section 8765, subdivision (d), and California Code of Regulations, title 16, section 464, subdivision (c) (failure to file a corner record), as set forth in Factual Findings 20 and 21, and Legal Conclusion 5.

Costs

12. Pursuant to Business and Professions Code section 125.3, Complainant is entitled to recover reasonable costs of prosecution of this matter in the amount of \$2,027.81, as set forth in Factual Findings 23 and 24.

Analysis re: Discipline Imposed

13. Despite Respondent's 30-year history of licensure, he has demonstrated an unrelenting and unreasonable stance regarding his refusal to file corner records or records of surveys as required. His remorseless perpetuation of his position is illustrated both by his continued refusal to comply, despite the issuance of the Citation, and his testimony adamantly defending his violations. Given Respondent's unyielding refusal to accept responsibility and his demonstrated unwillingness to change his practices to comply with the law, the likelihood of recidivism is high. This bodes poorly for his rehabilitation through probation and points to license revocation as the necessary level of discipline.

ORDER

WHEREFORE, THE FOLLOWING ORDERS are hereby made:

1. Land Surveyor License No. L 4861, issued to Respondent John Edward Combs, is hereby revoked.
2. If Respondent later applies for a new land surveyor license or reinstatement of his revoked license, Respondent shall reimburse the Board \$2,027.81 for its prosecutorial costs in this case, prior to reinstatement or issuance of any land surveyor license.

DATED: January 27, 2011

Original Signed
JULIE CABOS-DWEN
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 MARC D. GREENBAUM
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6 Attorneys for Complainant
7

8 **BEFORE THE**
9 **BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 833-A

13 JOHN EDWARD COMBS
6013 Lakewood Blvd.
Lakewood, CA 90712

O.A.H. No.

A C C U S A T I O N

14 Land Surveyor License No. L 4861

15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

19 1. David E. Brown (Complainant) brings this Accusation solely in his official
20 capacity as the Executive Officer of the Board for Professional Engineers and Land Surveyors,
21 Department of Consumer Affairs.

22 2. On or about March 19, 1980, the Board for Professional Engineers and
23 Land Surveyors issued Land Surveyor License Number L 4861 to John Edward Combs
24 (Respondent). The License was in full force and effect at all times relevant to the charges
25 brought herein and will expire on September 30, 2010, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board for Professional Engineers
28 and Land Surveyors (Board), Department of Consumer Affairs, under the authority of the

1 following laws. All section references are to the Business and Professions Code unless otherwise
2 indicated.

3 4. Section 118, subdivision (b), of the Code provides that the suspension,
4 expiration, surrender, or cancellation of a license shall not deprive the Board/Registrar/Director
5 of jurisdiction to proceed with a disciplinary action during the period within which the license
6 may be renewed, restored, reissued or reinstated.

7 5. Section 8759, subdivision (a), provides in pertinent part, that a licensed
8 land surveyor shall use a written contract when contracting to provide professional services to a
9 client, and that such contract must be executed by the land surveyor and the client prior to the
10 licensed surveyor beginning any work. The written contract shall include, but not be limited to,
11 all of the following:

12 (1) A description of the services to be provided to the client by the licensed land
13 surveyor or registered civil engineer.

14 (2) A description of any basis of compensation applicable to the contract, and the
15 method of payment agreed upon by the parties.

16 (3) The name, address, and license or certificate number of the licensed land
17 surveyor or registered civil engineer, and the name and address of the client.

18 (4) A description of the procedure that the licensed land surveyor or registered
19 civil engineer and the client will use to accommodate additional services.

20 (5) A description of the procedure to be used by any party to terminate the
21 contract.

22 6. Section 8780 of the Code states:

23 “The board may receive and investigate complaints against licensed land
24 surveyors and registered civil engineers, and make findings thereon.

25 “By a majority vote, the board may reprove, suspend for a period not to exceed
26 two years, or revoke the license or certificate of any licensed land surveyor or registered civil
27 engineer, respectively, licensed under this chapter or registered under the provisions of Chapter 7
28 (commencing with Section 6700), whom it finds to be guilty of:

1 “(a) Any fraud, deceit, or misrepresentation in his or her practice of land
2 surveying.

3 “(b) Any negligence or incompetence in his or her practice of land surveying.

4 “(c) Any fraud or deceit in obtaining his or her license.

5 “(d) Any violation of any provision of this chapter or of any other law relating to
6 or involving the practice of land surveying.

7 “(e) Any conviction of a crime substantially related to the qualifications,
8 functions, and duties of a land surveyor. The record of the conviction shall be conclusive
9 evidence thereof.

10 “(f) Aiding or abetting any person in the violation of any provision of this chapter.

11 “(g) A breach or violation of a contract to provide land surveying services.

12 “(h) A violation in the course of the practice of land surveying of a rule or
13 regulation of unprofessional conduct adopted by the board.”

14 7. Section 8762 of the Code provides:

15 (a) Except as provided in subdivision (b), after making a field survey in
16 conformity with the practice of land surveying, the licensed surveyor or licensed civil engineer
17 may file with the county surveyor in the county in which the field survey was made, a record of
18 the survey.

19 (b) Notwithstanding subdivision (a), after making a field survey in conformity
20 with the practice of land surveying, the licensed land surveyor or licensed civil engineer shall file
21 with the county surveyor in the county in which the field survey was made a record of the survey
22 relating to land boundaries or property lines, if the field survey discloses any of the following:

23 (1) Material evidence or physical change, which in whole or in part does not
24 appear on any subdivision map, official map, or record of survey previously recorded or properly
25 filed in the office of the county recorder or county surveying department, or map or survey record
26 maintained by the Bureau of Land Management of the United States.

27 (2) A material discrepancy with the information contained in any subdivision
28 map, official map, or record of survey previously recorded or filed in the office of the county

1 recorder or the county surveying department, or any map or survey record maintained by the
2 Bureau of Land Management of the United States. For purposes of this subdivision, a "material
3 discrepancy" is limited to a material discrepancy in the position of points or lines, or in
4 dimensions.

5 (3) Evidence that, by reasonable analysis, might result in materially alternate
6 positions of lines or points, shown on any subdivision map, official map, or record of survey
7 previously recorded or filed in the office of the county recorder or the county surveying
8 department, or any map or survey record maintained by the Bureau of Land Management of the
9 United States.

10 (4) The establishment of one or more points or lines not shown on any subdivision
11 map, official map, or record of survey, the positions of which are not ascertainable from an
12 inspection of the subdivision map, official map, or record of survey.

13 (5) The points or lines set during the performance of a field survey of any parcel
14 described in any deed or other instrument of title recorded in the county recorder's office are not
15 shown on any subdivision map, official map, or record of survey.

16 (c) The record of survey required to be filed pursuant to this section shall be filed
17 within 90 days after the setting of boundary monuments during the performance of a field survey
18 or within 90 days after completion of a field survey, whichever occurs first.

19 (d) (1) If the 90-day time limit contained in subdivision (c) cannot be complied
20 with for reasons beyond the control of the licensed land surveyor or licensed civil engineer, the
21 90-day time period shall be extended until the time at which the reasons for delay are eliminated.
22 If the licensed land surveyor or licensed civil engineer cannot comply with the 90-day time limit,
23 he or she shall, prior to the expiration of the 90-day time limit, provide the county surveyor with
24 a letter stating that he or she is unable to comply. The letter shall provide an estimate of the date
25 for completion of the record of survey, the reasons for the delay, and a general statement as to the
26 location of the survey, including the assessor's parcel number or numbers.

27 (2) The licensed land surveyor or licensed civil engineer shall not initially be
28 required to provide specific details of the survey. However, if other surveys at the same location

1 are performed by others which may affect or be affected by the survey, the licensed land surveyor
2 or licensed civil engineer shall then provide information requested by the county surveyor
3 without unreasonable delay.

4 (e) Any record of survey filed with the county surveyor shall, after being
5 examined by him or her, be filed with the county recorder.

6 (f) If the preparer of the record of survey provides a postage-paid, self-addressed
7 envelope or postcard with the filing of the record of survey, the county recorder shall return the
8 postage-paid, self-addressed envelope or postcard to the preparer of the record of survey with the
9 filing data within 10 days of final filing. For the purposes of this subdivision, "filing data"
10 includes the date, the book or volume, and the page at which the record of survey is filed with the
11 county recorder.

12 8. Section 8764 of the Code states:

13 The record of survey shall show the applicable provisions of the following consistent with
14 the purpose of the survey:

15 (a) All monuments found, set, reset, replaced, or removed, describing their kind, size, and
16 location, and giving other data relating thereto.

17 (b) Bearing or witness monuments, basis of bearings, bearing and length of lines, scale of
18 map, and north arrow.

19 (c) Name and legal designation of the property in which the survey is located, and the
20 date or time period of the survey.

21 (d) The relationship to those portions of adjacent tracts, streets, or senior conveyances
22 which have common lines with the survey.

23 (e) Memorandum of oaths.

24 (f) Statements required by Section 8764.5.

25 (g) Any other data necessary for the intelligent interpretation of the various items and
26 locations of the points, lines, and areas shown, or convenient for the identification of the survey
27 or surveyor, as may be determined by the civil engineer or land surveyor preparing the record of
28 survey.

1 The record of survey shall also show, either graphically or by note, the reason or reasons,
2 if any, why the mandatory filing provisions of paragraphs (1) to (5), inclusive, of subdivision (b)
3 of Section 8762 apply.

4 The record of survey need not consist of a survey of an entire property.

5 9. Section 8765 of the Code states, in pertinent part:

6 "A record of survey is not required of any survey:

7 (d) When the survey is a retracement of lines shown on a subdivision map, official
8 map, or a record of survey, where no material discrepancies with those records are found and
9 sufficient monumentation is found to establish the precise location of property corners thereon,
10 provided that a corner record is filed for any property corners which are set or reset or found to
11 be of a different character than indicated by prior records. For purposes of this subdivision, a
12 "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in
13 dimensions."

14 10. Section 8773, subdivision (a) of the Code, states:

15 "(a) Except as provided in subdivision (b) of Section 8773.4, a person authorized
16 to practice land surveying in this state shall complete, sign, stamp with his or her seal, and file
17 with the county surveyor or engineer of the county where the corners are situated, a written
18 record of corner establishment or restoration to be known as a "corner record" for every corner
19 established by the Survey of the Public Lands of the United States, except "lost corners," as
20 defined by the Manual of Instructions for the Survey of the Public Lands of the United States,
21 and every accessory to such corner which is found, set, reset, or used as control in any survey by
22 such authorized person."

23 11. California Code of Regulations, Title 16, section 404, subdivision (n),
24 states:

25 "For the sole purpose of investigating complaints and making findings thereon
26 under Sections 6775 and 8780 of the Code, "incompetence" as used in Sections 6775 and 8780 of
27 the Code is defined as the lack of knowledge or ability in discharging professional obligations as
28 a professional engineer or land surveyor."

1 12. California Code of Regulations, Title 16, section 404, subdivision (w),
2 states:

3 “For the sole purpose of investigating complaints and making findings thereon
4 under Sections 6775 and 8780 of the Code, "negligence" as used in Sections 6775 and 8780 of
5 the Code is defined as the failure of a licensee, in the practice of professional engineering or land
6 surveying, to use the care ordinarily exercised in like cases by duly licensed professional
7 engineers and land surveyors in good standing.”

8 13. California Code of Regulations, Title 16, section 464, subdivision (e),
9 states:

10 “When conducting a survey which is a retracement of lines shown on a
11 subdivision map, official map, or a record of survey, where no material discrepancies with these
12 records are found and where sufficient monumentation is found to establish the precise location
13 of property corners thereon, a corner record may be filed in lieu of a record of survey for any
14 property corners which are set or reset or found to be of a different character than indicated by
15 prior records. Such corner records may show one or more property corners, property controlling
16 corners, reference monuments, or accessories to property corners on a single corner record
17 document so long as it is legible, clear, and understandable.”

18 14. Pursuant to California Code of Regulations, Title 16, section 464,
19 subdivision (c), the corner record shall be filed within 90 days from the date a corner was found,
20 set, reset, or used as control in any survey.

21 **COST RECOVERY/RESTITUTION**

22 15. Code section 125.3 provides that the Board may request the administrative
23 law judge to direct a licensee found to have committed a violation or violations of the licensing
24 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
25 case.

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1 Tract No. 1868 Sleepy Hollow Number Two

2 FIRST CAUSE FOR DISCIPLINE

3 (Negligence/Incompetence)

4 16. Respondent is subject to disciplinary action under section 8780(b) of the
5 Code in that he failed to use the care ordinarily exercised in like cases by a duly licensed land
6 surveyor in the practice of land surveying, or in the alternative, lacked the requisite knowledge
7 and skill to discharge his duties. The circumstances are as follows:

8 17. In or about 2001, Respondent performed a survey of lots in a recorded
9 property subdivision located in San Bernardino County, California, more particularly described
10 as Tract No. 1868 Sleepy Hollow Number Two. Respondent based his survey on record
11 bearings and distances from an old map that does not close mathematically by gross amounts.
12 Respondent started his survey at points set by the San Bernardino County Surveyor that were
13 shown on a recent "record of survey" but did not extend beyond his client's property to check
14 into other points.

15 18. Respondent filed a "record of survey" instead of a "corner record", but
16 gave no reason for filing the former rather than the latter, as required by Code section 8764,
17 subpart (g). Respondent noted on his "record of survey", "FILE THIS MAP WITHOUT ANY
18 CHANGES." Respondent's map contained some number transpositions and was smaller than
19 the required size, and was returned by the San Bernardino County Surveyor for corrections.

20 19. After Respondent corrected the map and re-filed it, the County Surveyor
21 added a statement of his objections to Respondent's map, including: failure to tie into the easterly
22 or southerly boundary of the tract being surveyed; failure to document making a diligent search
23 for other monumentation; failure to note lines of occupation or improvements and summarized
24 "this map is not in accordance with accepted survey procedures."

25 20. Respondent's failure to tie into any other points along the easterly or
26 southerly boundary of the tract that he surveyed constitutes negligence.

27 21. Respondent's failure to locate evidence of original corners, noted as being
28 marked with redwood 2" x 2" stakes on the original tract map constitutes negligence, or in the

1 alternative, Respondent's failure to note why he used only record data in his "record of survey"
2 constitutes negligence.

3 **270 Prospect Ave., Long Beach, CA**

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Negligence)**

6 22. Respondent is subject to disciplinary action under section 8780(b) of the
7 Code in that he failed to use the care ordinarily exercised in like cases by a duly licensed land
8 surveyor in the practice of land surveying, or in the alternative, lacked the requisite knowledge
9 and skill to discharge his duties. The circumstances are as follows:

10 23. In or about December, 2007, Respondent was engaged by Jeff
11 Calderwood, a general contractor on behalf of property owner, William Reseigh, to survey and
12 map the property identified as 270 Prospect Ave., Long Beach, CA. Respondent did not
13 execute a written contract between himself and his client prior to performing any work.

14 24. Respondent performed the survey of the subject property, a lot within a
15 recorded subdivision. Respondent's survey used points at street intersections that have no
16 apparent pedigree according to their lack of a reference. Respondent established lot lines by
17 proration and set points on the east and west prolongations of lot lines.

18 25. Respondent did not file a "corner record" with the County Surveyor, in the
19 event that there was no material discrepancy, or in the alternative, file a "record of survey" in the
20 event there was a material discrepancy disclosed if the street centerline points had no pedigree.

21 26. Respondent's failure to execute a written contract with his client
22 that would have memorialized a description of his services and compensation constitutes
23 negligence.

24 27. Respondent's failure to show references to the centerline intersection
25 points and/ or failure to file a "record of survey" explaining their use constitutes negligence.

26 **THIRD CAUSE FOR DISCIPLINE**

27 **(Failure to Execute a Written Contract)**

28 28. Respondent is subject to disciplinary action under Code sections 8759,

1 subdivision(a), in that he failed to execute a written contract with his client before commencing
2 any work, as set forth in the preceding paragraph 23.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Failure to File Timely Record of Survey)**

5 29. Respondent is subject to disciplinary action under Code sections 8780,
6 subdivision (d), and 8762, subdivisions (b) and (c) in that he failed to file a record of survey
7 within 90 days after having conducted a survey on property and having set new boundary
8 monuments or established one or more points or lines not shown on any previous subdivision
9 map, official map, or record of survey, or under circumstances in which the survey disclosed
10 material evidence and/or physical changes and/or discrepancies with maps and surveys
11 previously filed in the county recorder's office pertaining to the land at issue, or could have, by
12 reasonable analysis, resulted in materially alternate positions of lines or points shown on
13 previous maps or surveys pertaining to the property, as set forth in the preceding paragraphs 23
14 through 25.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Failure to File Timely Corner Record)**

17 30. In the alternative to the preceding paragraph 29, if Respondent was for any
18 reason not required to file a timely record of survey within 90 days after having conducted the
19 survey described in the preceding paragraphs 23 through 25, then Respondent is subject to
20 disciplinary action under Code sections 8780, subdivision (d), and 8765, subdivision (d), and
21 California Code of Regulations, Title 16, section 464, subdivision (c), in that he failed to file a
22 corner record within 90 days after having conducted a survey

23 **3572 Delta Ave., Long Beach, CA**

24 **SIXTH CAUSE FOR DISCIPLINE**

25 **(Negligence)**

26 31. Respondent is subject to disciplinary action under section 8780(b) of the
27 Code in that he failed to use the care ordinarily exercised in like cases by a duly licensed land

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1 surveyor in the practice of land surveying, or in the alternative, lacked the requisite knowledge
2 and skill to discharge his duties. The circumstances are as follows:

3 32. In or about 2005, Respondent performed a survey of a lot in a recorded
4 subdivision for the property identified as 3572 Delta Ave., Long Beach, CA. The plat prepared
5 by Respondent shows points set, but no method of establishment. There is no block closure to
6 verify any of the numbers on the plat. The plat is signed, sealed and dated by Respondent, but is
7 not on the correct Board approved form. Respondent did not record the plat. Depending upon
8 the circumstances, if a record of survey was not required to be filed, in the alternative, respondent
9 was required to file a corner record. Respondent neither filed a record of survey nor filed a
10 corner record.

11 **SEVENTH CAUSE FOR DISCIPLINE**

12 **(Failure to File Timely Record of Survey)**

13 33. Respondent is subject to disciplinary action under Code sections 8780,
14 subdivision (d), and 8762, subdivisions (b) and (c) in that he failed to file a record of survey
15 within 90 days after having conducted a survey on property and having set new boundary
16 monuments or established one or more points or lines not shown on any previous subdivision
17 map, official map, or record of survey, or under circumstances in which the survey disclosed
18 material evidence and/or physical changes and/or discrepancies with maps and surveys
19 previously filed in the county recorder's office pertaining to the land at issue, or could have, by
20 reasonable analysis, resulted in materially alternate positions of lines or points shown on
21 previous maps or surveys pertaining to the property, as set forth in the preceding paragraphs 31
22 and 32.

23 **EIGHTH CAUSE FOR DISCIPLINE**

24 **(Failure to File Timely Corner Record)**

25 34. In the alternative to the preceding paragraph 33, if Respondent was for any
26 reason not required to file a timely record of survey within 90 days after having conducted the
27 survey described in the preceding paragraphs 31 and 32, then Respondent is subject to
28 disciplinary action under Code sections 8780, subdivision (d), and 8765, subdivision (d), and

1 California Code of Regulations, Title 16, section 464, subdivision (c), in that he failed to file a
2 corner record within 90 days after having conducted a survey.

3 **NINTH CAUSE FOR DISCIPLINE**

4 **(Failure to Execute a Written Contract)**

5 35. Respondent is subject to disciplinary action under Code sections 8759,
6 subdivision(a), in that he failed to execute a written contract with his client before commencing
7 any work, as set forth in the preceding paragraph 32.

8 **Lot 283, Tract 907 MM 28/25-33, Newport Beach, CA**

9 **TENTH CAUSE FOR DISCIPLINE**

10 **(Failure to File Timely Record of Survey)**

11 36. Respondent is subject to disciplinary action under Code sections 8780,
12 subdivision (d), and 8762, subdivisions (b) and (c) in that he failed to file a record of survey
13 within 90 days after having conducted a survey on property and having set new boundary
14 monuments or established one or more points or lines not shown on any previous subdivision
15 map, official map, or record of survey, or under circumstances in which the survey disclosed
16 material evidence and/or physical changes and/or discrepancies with maps and surveys
17 previously filed in the county recorder's office pertaining to the land at issue, or could have, by
18 reasonable analysis, resulted in materially alternate positions of lines or points shown on
19 previous maps or surveys pertaining to the property. The circumstances are as follows:

20 37. Sometime prior to 2009, Respondent set monuments as were found to
21 exist on submitted Record of Survey 2008-1040, description being All Corner of Lot 283, Tract
22 907 MM 28/25-33, Newport Beach, CA. However, Respondent failed to file a Record of Survey
23 within 90 days after setting his monuments and further, ignored inquiries by letters dated January
24 2, 2009 and May 15, 2009 from the Joint Professional Practices Committee of the California
25 Land Surveyor's Assoc. concerning the facts of Respondent not filing a Record of Survey for the
26 monuments he set.

27 **DISCIPLINE CONSIDERATIONS**

28 38. To determine the degree of discipline, if any, to be imposed on

1 Respondent, Complainant alleges that in a prior citation matter before the Board for Professional
2 Engineers and Land Surveyors, Case Number 5064-L, Citation Order 5064-L was issued to
3 Respondent on February 28, 2001. It became final on March 30, 2001. The citation was issued
4 to Respondent after an investigation revealed that he had violated Business and Profession Code
5 section 8762 by failing to record a Record of Survey within 90 days after performing a filed
6 survey in September 1997 during which he set monuments and established boundary lines on
7 property located in San Bernardino County. After being contacted by the Enforcement Unit of
8 the Board for Professional Engineers and Land Surveyors during the course of the investigation
9 in 1999 and 2000, Respondent submitted the Record of Survey to the County Surveyor's Office
10 for checking but failed to resubmit it within 60 days after it was returned to him by the County, in
11 violation of Business and Professions Code section 8767. Respondent's survey was recorded in
12 February 2001. Citation Order 5064-L also contained an Order of Abatement ordering
13 Respondent to comply with the Section 8762 and 8767 by timely filing and resubmitting his
14 records of survey.

15 **DISCIPLINE CONSIDERATIONS**

16 39. To determine the degree of discipline, if any, to be imposed on
17 Respondent, Complainant alleges that in a prior citation matter before the Board for Professional
18 Engineers and Land Surveyors, Case Number 5064-L, Citation Order 5064-L was issued to
19 Respondent on February 28, 2001. It became final on March 30, 2001. The citation was issued
20 to Respondent after an investigation revealed that he had violated Business and Profession Code
21 section 8762 by failing to record a Record of Survey within 90 days after performing a filed
22 survey in September 1997 during which he set monuments and established boundary lines on
23 property located in San Bernardino County. After being contacted by the Enforcement Unit of
24 the Board for Professional Engineers and Land Surveyors during the course of the investigation
25 in 1999 and 2000, Respondent submitted the Record of Survey to the County Surveyor's Office
26 for checking but failed to resubmit it within 60 days after it was returned to him by the County, in
27 violation of Business and Professions Code section 8767. Respondent's survey was recorded in
28 February 2001. Citation Order 5064-L also contained an Order of Abatement ordering

1 Respondent to comply with the Section 8762 and 8767 by timely filing and resubmitting his
2 records of survey.

3 40. Citation Order 5064-L also contained a civil penalty in the amount of
4 \$500.00, which was to be paid within 30 days of the citation becoming final. The fine was paid
5 on April 22, 2004. The citation is now final and is incorporated by reference as if fully set
6 forth.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the Board for Professional Engineers and Land Surveyors
10 issue a decision:

11 1. Revoking or suspending Land Surveyor License Number L 4861, issued to
12 John Edward Combs,

13 2. Ordering John Edward Combs to pay the Board for Professional Engineers
14 and Land Surveyors the reasonable costs of the investigation and enforcement of this case,
15 pursuant to Business and Professions Code section 125.3;

16 3. Taking such other and further action as deemed necessary and proper.

17
18 DATED: 11/25/09

19
20 *Original Signed*

21 David E. Brown
22 Executive Officer
23 Board for Professional Engineers and Land Surveyors
24 Department of Consumer Affairs
25 State of California
26 Complainant

27 LA2008504015

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7

8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 833-A

12 **JOHN EDWARD COMBS**
13 **6013 Lakewood Blvd.**
Lakewood, CA 90712
14 **Land Surveyor License No. L 4861**

OAH No. L-2010050570

SUPPLEMENTAL ACCUSATION

15 Respondent.

16 Complainant alleges as a Supplemental Accusation to the Accusation in this matter filed on
17 November 25, 2009 as follows:

18 **Centerline of Kings Road, 810' Easterly of Signal Road, Referenced on Corner Record**
19 **2009-2811A, Newport Beach, CA**

20 **ELEVENTH CAUSE FOR DISCIPLINE**

21 **(Failure to File Timely Record of Survey)**

22 41. Respondent is subject to disciplinary action under Code sections 8780, subdivision
23 (d), and 8762, subdivisions (b) and (c) in that he failed to file a record of survey within 90 days
24 after having conducted a survey on property and having set new boundary monuments or
25 established one or more points or lines not shown on any previous subdivision map, official map,
26 or record of survey, or under circumstances in which the survey disclosed material evidence
27 and/or physical changes and/or discrepancies with maps and surveys previously filed in the
28 county recorder's office pertaining to the land at issue, or could have, by reasonable analysis,

1 resulted in materially alternate positions of lines or points shown on previous maps or surveys
2 pertaining to the property. The circumstances are as follows:

3 42. Sometime prior to 2010, Respondent set monuments as were found to exist on
4 submitted Corner Record 2009-2811A, description being Centerline of Kings Road, 810' Easterly
5 of Signal Road, Newport Beach, CA. However, Respondent failed to file a Record of Survey
6 within 90 days after setting his monuments and further, ignored inquiries by letters dated
7 December 6, 2009 and March 8, 2010, from the Joint Professional Practices Committee of the
8 California Land Surveyor's Assoc. concerning the facts of Respondent not filing a Record of
9 Survey for the monuments he set.

10 **Centerline of Kings Road, 670' Easterly of Signal Road, Referenced on Corner Record**
11 **2009-2803A, Newport Beach, CA**

12 **TWELFTH CAUSE FOR DISCIPLINE**

13 **(Failure to File Timely Record of Survey)**

14 43. Respondent is subject to disciplinary action under Code sections 8780, subdivision
15 (d), and 8762, subdivisions (b) and (c) in that he failed to file a record of survey within 90 days
16 after having conducted a survey on property and having set new boundary monuments or
17 established one or more points or lines not shown on any previous subdivision map, official map,
18 or record of survey, or under circumstances in which the survey disclosed material evidence
19 and/or physical changes and/or discrepancies with maps and surveys previously filed in the
20 county recorder's office pertaining to the land at issue, or could have, by reasonable analysis,
21 resulted in materially alternate positions of lines or points shown on previous maps or surveys
22 pertaining to the property. The circumstances are as follows:

23 44. Sometime prior to 2010, Respondent set monuments as were found to exist on
24 submitted Corner Record 2009-2803A, description being Centerline of Kings Road, 670' Easterly
25 of Signal Road, Newport Beach, CA. However, Respondent failed to file a Record of Survey
26 within 90 days after setting his monuments and further, ignored inquiries by letters dated
27 December 6, 2009 and March 8, 2010, from the Joint Professional Practices Committee of the
28

1 California Land Surveyor's Assoc. concerning the facts of Respondent not filing a Record of
2 Survey for the monuments he set.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a
6 decision:

7 1. Revoking or suspending Land Surveyor License Number L 4861, issued to John
8 Edward Combs;

9 2. Ordering John Edward Combs to pay the Board for Professional Engineers and Land
10 Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to
11 Business and Professions Code section 125.3;

12 3. Taking such other and further action as deemed necessary and proper.

13
14 DATED: August 19 2010

Original Signed

DAVID E. BROWN

Executive Officer

Board for Professional Engineers and Land Surveyors

Department of Consumer Affairs

State of California

Complainant

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19 LA2008504015
accusation.rtf

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BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 **JOHN EDWARD COMBS,**

13 Respondent.

Case No. 833-A

OAH No. L-2010050570

**AMENDMENT TO SUPPLEMENTAL
ACCUSATION**

15 Complainant hereby Amends the Supplemental Accusation filed herein as follows:

16 THIRTEENTH CAUSE FOR DISCIPLINE

17 (Failure to File Timely Corner Record)

18 45. In the alternative to the preceding paragraphs 36 and 37 of the Accusation, if
19 Respondent was for any reason not required to file a timely record of survey within 90 days after
20 having conducted the survey described in the preceding paragraphs 36 and 37, then Respondent
21 is subject to disciplinary action under Code sections 8780, subdivision (d), and 8765, subdivision
22 (d), and California Code of Regulations, Title 16, section 464, subdivision (c), in that he failed
23 to file a corner record within 90 days after having conducted a survey.

24 FOURTEENTH CAUSE FOR DISCIPLINE

25 (Failure to File Timely Corner Record)

26 46. In the alternative to the preceding paragraphs 41 and 42 of the Supplemental
27 Accusation, if Respondent was for any reason not required to file a timely record of survey within
28 90 days after having conducted the survey described in the preceding paragraphs 41 and 42, then

Respondent is subject to disciplinary action under Code sections 8780, subdivision (d), and 8765, subdivision (d), and California Code of Regulations, Title 16, section 464, subdivision (c), in that he failed to file a corner record within 90 days after having conducted a survey.

FIFTEENTH CAUSE FOR DISCIPLINE

(Failure to File Timely Corner Record)

47. In the alternative to the preceding paragraphs 43 and 44 of the Supplemental Accusation, if Respondent was for any reason not required to file a timely record of survey within 90 days after having conducted the survey described in the preceding paragraphs 43 and 44, then Respondent is subject to disciplinary action under Code sections 8780, subdivision (d), and 8765, subdivision (d), and California Code of Regulations, Title 16, section 464, subdivision (c), in that he failed to file a corner record within 90 days after having conducted a survey.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a decision:

1. Revoking or suspending Land Surveyor License Number L 4861, issued to John Edward Combs,
2. Ordering John Edward Combs to pay the Board for Professional Engineers and Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 12/8/10

Original Signed

DAVID E. BROWN

Executive Officer

Board for Professional Engineers and
Land Surveyors

Department of Consumer Affairs

State of California

Complainant